

**IN THE MATTER OF:
JUSTIN T. BRIDGETT**

Justin T. Bridgett
For the Petitioner

Valerie Whitby

Department of Housing and
Community Affairs

Before: Tammy J. CitaraManis, Hearing Examiner

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I. STATEMENT OF THE CASE

In Petition No. S-2837, Justin T. Bridgett¹ seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 13500 Keating Street, Rockville, Maryland in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 1, Block 53, in the Wheaton Woods Subdivision. The Tax Account number is 01281212.

On March 16, 1971, the Board of Appeals approved a special exception request of Robert B. Kass, D.D.S, Case No. CBA-2972, to permit the use of the basement level of the property for a non-medical practitioner's (dental) office subject to the following conditions:

1. The Petitioner shall be the only doctor (dentist) to practice on the subject property.
2. Before the dental practice is begun, off-street parking shall be installed in the following manner: Petitioner shall install a 20-foot by 25-foot parking area off of Parkland Drive, as well as a 9-foot by 40-foot parking area off of Keating Drive, substantially in accordance with Plan No. 4 submitted for the record, and subject to approval of the Department of Inspection and Licenses.

On October 24, 2004, the Board of Appeals revoked the special exception use as abandoned in Case No.CBA-2972, effective February 7, 2008.²

On March 14, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for July 19, 2012. Exhibit 11(b). Technical Staff of the Maryland-National

¹ According to the deed (Exhibit 19) and Maryland Department of Assessments and Taxation (SDAT) records (Exhibit 17), Petitioner and Adelaide Da Silva co-own the property. Since Ms. Da Silva did not sign the Petition for Special Exception (Exhibit 1) and was not present at the hearing, Petitioner was required to and did submit a signed Affidavit from Ms. Da Silva consenting to the Petition and agreeing to be bound by the conditions of approval if the special exception request is granted. Exhibit 21.

² Technical Staff incorrectly cited the Board of Appeals special exception case number as "S-2792". The correct citation is Case No.CBA-2972. To obtain an accurate history of the prior special exception use at this property, the Hearing Examiner reviewed and hereby takes official notice of the Board of Appeals records related to this property. The Board of Appeals records show the property address as 3500 Keating Street. The correct address is 13500 Keating Street. Should Petitioner object, he may file an objection during the 10-day period for requesting oral argument before the Board and the Hearing Examiner will reopen the record of the case.

Capital Park and Planning Commission (M-NCPPC) in a report dated July 10, 2012, recommended approval of the special exception, with five (5) conditions. Exhibit 14(a).³

A Housing Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property on June 13, 2012. Housing Code Inspector Valerie Whitby reported her findings in a memorandum dated June 28, 2012 (Exhibit 12). The inspector found the accessory apartment had 317.5 square feet of habitable space and as a result, concluded that occupancy in the unit must be limited to no more than two (2) occupants. Exhibit 12. Also submitted by DHCA was a memorandum dated July 19, 2012, from Ada De Jesus of DHCA (Licensing and Registration) noting that there were no accessory apartments units in the neighborhood. However, Ms. De Jesus reported there were three registered living units (RLU's) in the neighborhood; two were active and one was withdrawn or eliminated in 2005. Exhibit 18.

The hearing went forward as scheduled on July 19, 2012. Petitioner appeared *pro se*. Petitioner executed an Affidavit of Posting (Exhibit 20). Petitioner testified in support of the Petition and agreed to meet all the conditions set forth in the Technical Staff Report (Exhibit 14(a)), and the Housing Inspector's report (Exhibit 12). No opposition appeared at the hearing.

The record was held open until July 30, 2012, to allow Petitioner time to submit a signed Affidavit from Adelaide Da Silva, co-owner of the property, consenting to the Petition for Accessory Apartment and agreeing to be bound by all conditions of approval if the Petition is granted. It also allowed time for the Court Reporter to complete the hearing transcript. The record closed on July 30, 2012, with no further documents other than Affidavit from Adelaide Da Silva (Exhibit 21) and the transcript being received.

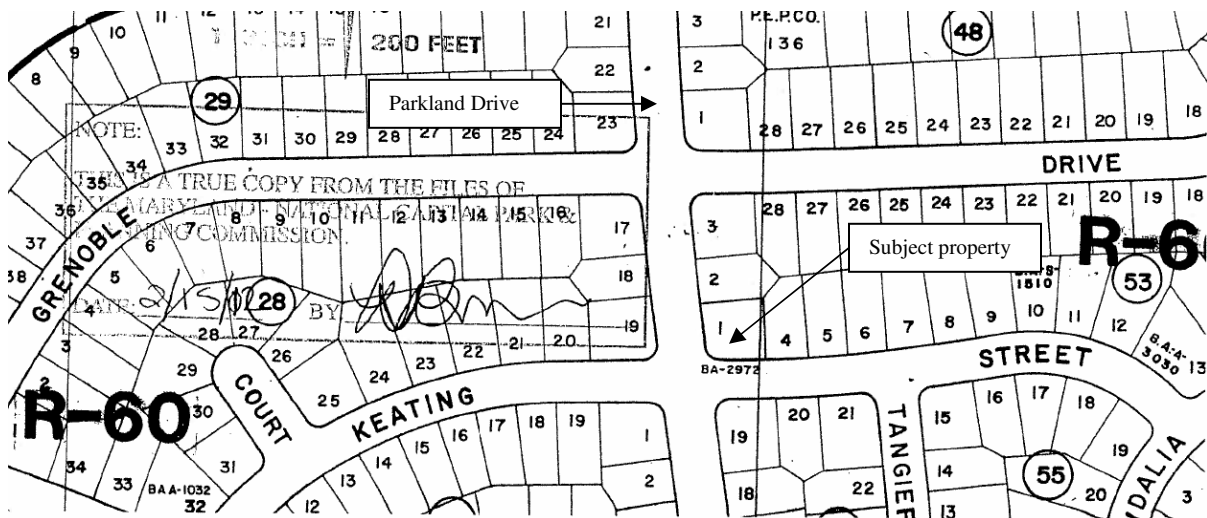
For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

³ The Technical Staff report is frequently quoted and paraphrased herein.

II. FACTUAL BACKGROUND

A. The Subject Property and Its Current Use

The subject property is located at 13500 Keating Street, Rockville, Maryland, in the Wheaton Woods Subdivision. It is zoned R-60. The property is a 7,244 square foot lot located on the northeast corner of Keating Street and Parkland Drive as shown (below) on the Zoning Map of the area (Exhibit 14(a), Attachment 2):



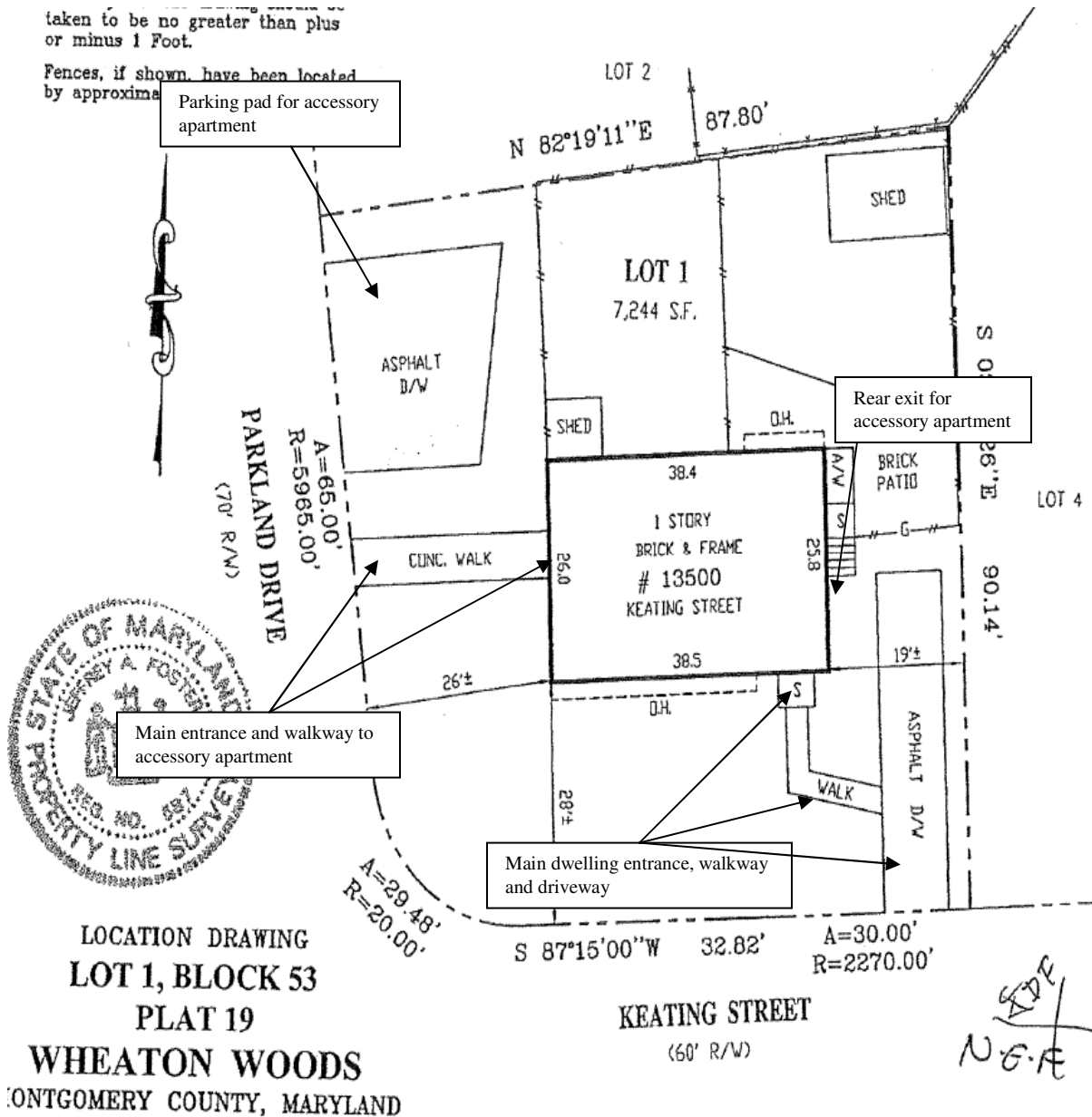
The lot is improved with a one-story single-family detached home with a basement.

Technical Staff described the property (Exhibit 14(a), p. 2):

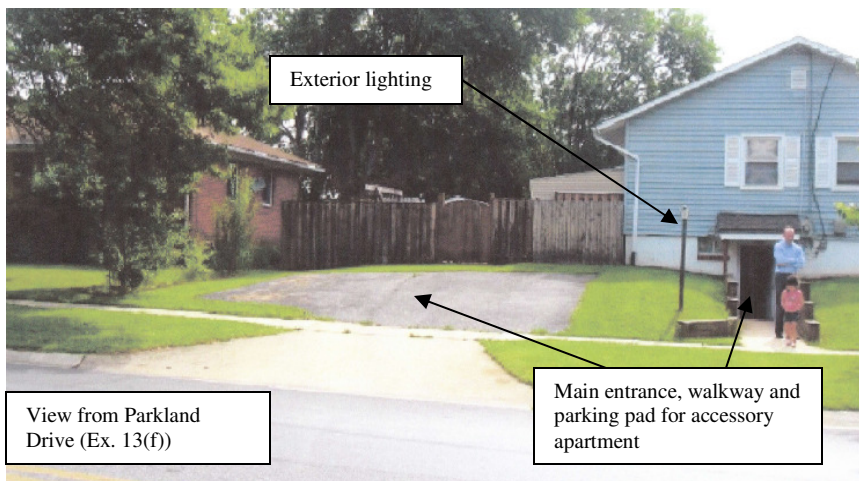
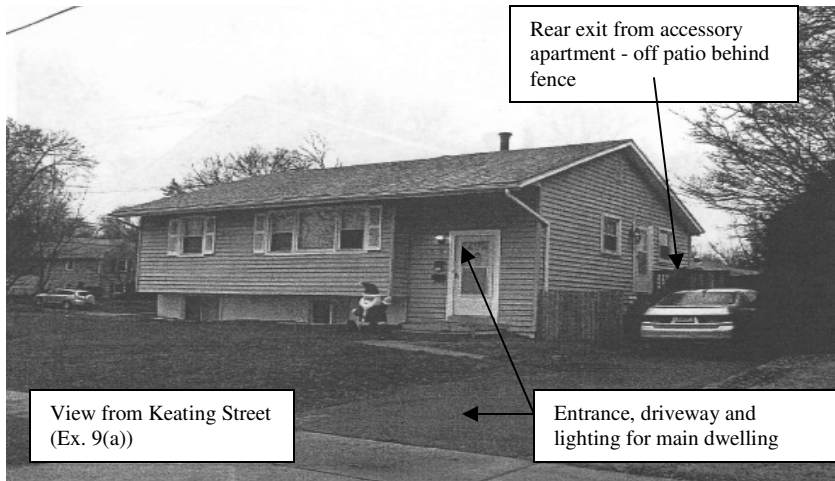
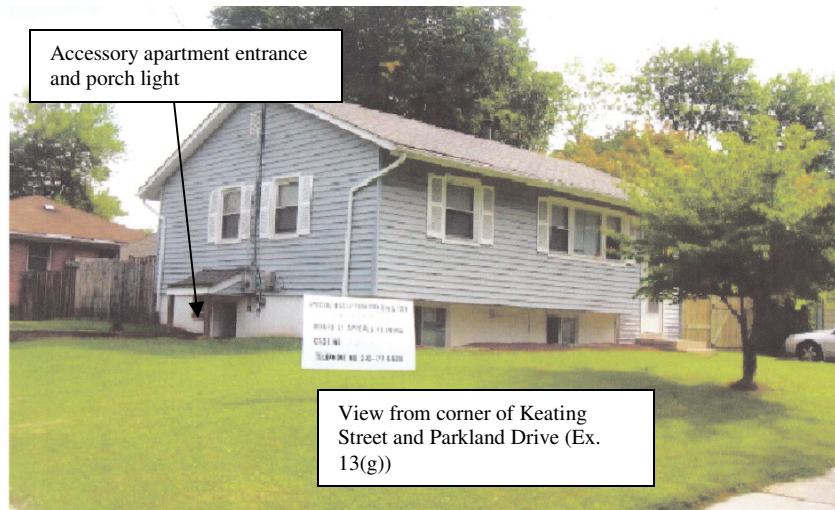
The main [dwelling's] primary entrance and driveway are off of Keating Street. The proposed accessory apartment has two entrances. The main entrance is on the west side of the house on Parkland Drive, accessed by a paved walkway ending in a couple of steps leading down to the front door [of the accessory apartment]. According to the applicant there is a wall light near the apartment's front entrance. Also, along the Parkland Drive frontage, there is an approximately six-foot post lamp near the entrance to the walkway. The second entrance is in the back, behind a tall wooden gate and accessed off a patio and down a flight of steps. There is currently no light fixture near the back entrance. The Department of Permitting Services has advised the applicant that a light is needed by the back entrance

There is a large tree in the front yard. The lawn on all sides of the property is well maintained. The backyard is gated. Within the gated area, there is another gated portion that contains a mulched play area.

The Site Plan for the property is shown below (Exhibit 4):



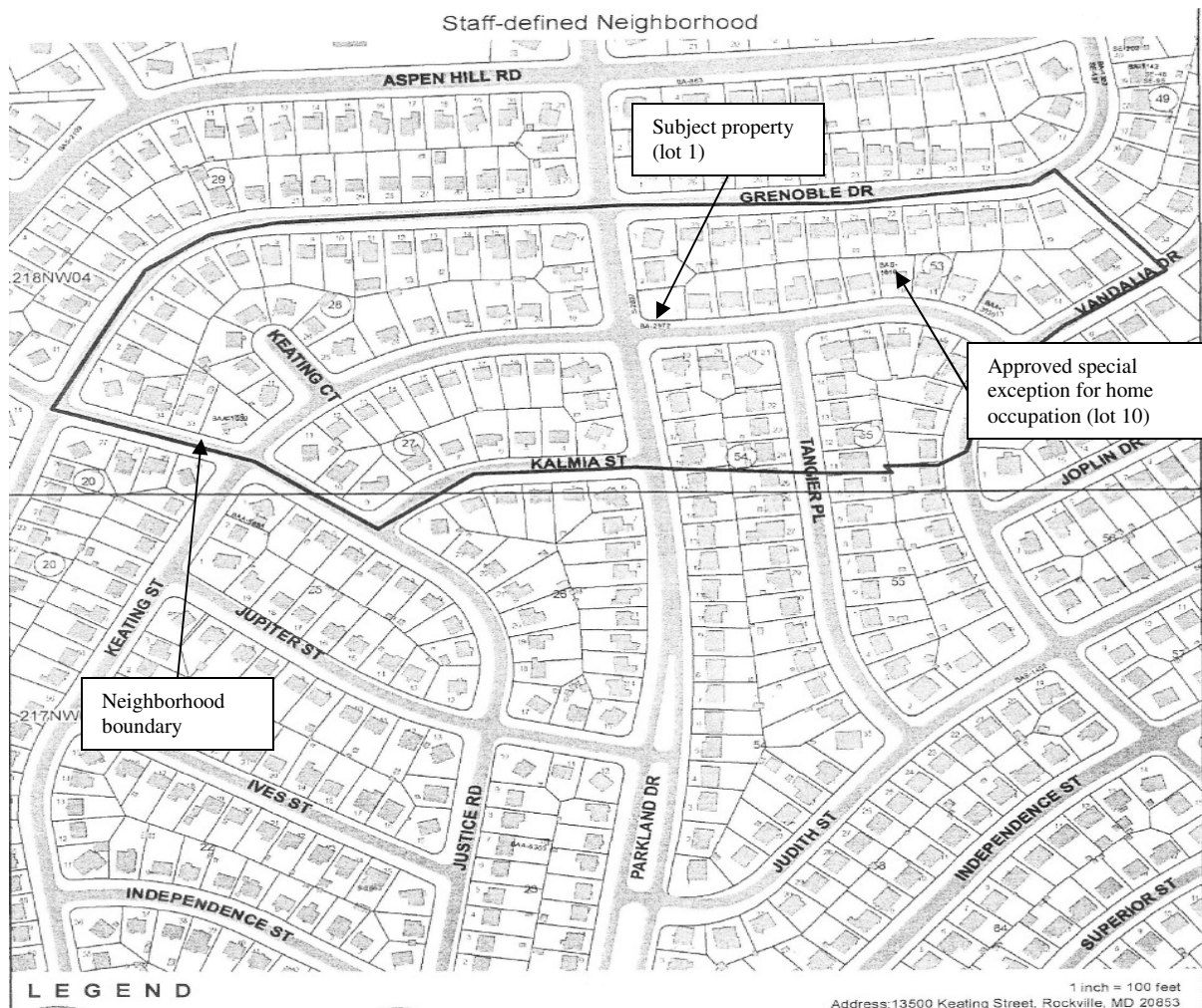
Photographs of the property, provided by the Housing Code Inspector (Exhibits 13(f)-(g)), and Petitioner (Exhibit 9(a)), are shown on the next page.



B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood as “bounded by Grenoble Drive to the north, Justice Road to the west, Kalmia Street and the approximate extension of Kalmia Street to the south and Vandalia Drive to the east.” Exhibit 14(a), p. 2. Having no evidence to the contrary, the Hearing Examiner accepts Staff’s definition of the general neighborhood.

The neighborhood boundary, which is depicted with a solid line on the location map shown below (Exhibit 16), has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic:



Technical Staff advises that there are no other accessory apartments within the defined neighborhood, zoned R-60. Technical Staff, however, reported there was one approved special exception for a home occupation for restoration and storage of antiques and collectibles located on lot 10 (east of property) on Keating Street. Exhibit 14(a), p. 2.

In a memorandum to the Housing Code Inspector dated July 19, 2012, Ada DeJesus with the DHCA, Licensing and Registration Unit, reported: “In the direct vicinity of the property, there are no accessory apartments and there are three [registered living units] RLUs.” Exhibit 18. Ms. DeJesus advised that two of the registered living units were active and one was withdrawn or eliminated in 2005.⁴ Based on the addresses provided by DHCA, there is only one active RLU (13421 Tangier Place) within the defined neighborhood.

The Hearing Examiner concurs with Technical Staff’s conclusion that the addition of an accessory apartment special exception use at the subject property will not result in an excessive concentration of similar uses or adversely affect the residential character of the neighborhood.

C. The Master Plan

The subject property lies within the geographic area covered by the *Aspen Hill Master Plan*, approved and adopted in 1994. Technical Staff advises that although there is no Master Plan recommendation relevant to this site, the Master Plan supports maintaining the R-60 zoning and “residential character of Aspen Hill.” Exhibit 14(a), p. 3. Additionally, Technical Staff believes “[a]n accessory apartment on this site will help the Aspen Hill maintain its housing diversity.” *Id.* Thus, Technical Staff concluded that the subject application is consistent with the Master Plan.

⁴ DHCA provided the following addresses for the two active registered living units: 13510 Parkland Drive (0.11 miles north of Keating Street) and 13451 Tangier Place (0.10 miles south of Keating Street).

The Hearing Examiner agrees with Technical Staff because the Plan supports the R-60 zoning which permits accessory apartments by special exception. While the main entrance to the accessory apartment is visible from Parkland Drive, it is consistent with a side entrance to a single-family home. No modifications or changes to the property are necessary to accommodate this special exception use. Since the exterior of Petitioner's home will not be changed and there is sufficient off-street parking to accommodate the proposed use and main dwelling, it will retain the residential appearance and compatibility sought by the Master Plan. The Hearing Examiner therefore finds that the proposed use is consistent with the *Aspen Hill Master Plan*.

D. The Proposed Use

Petitioner is requesting approval of an existing 598 square foot accessory apartment located in the basement of his single-family, split-foyer, home.⁵ Technical Staff reported that the enclosed floor area of Petitioner's home (including the basement) is approximately 2,054 square feet and concluded that the accessory apartment is subordinate to the main dwelling. Exhibit 14(a), p. 12. Petitioner and Ms. Da Silva will reside in the main dwelling and the accessory apartment is currently occupied by two tenants. Tr. 19.

The accessory apartment is a separate living unit with two separate exterior entrances. The main entrance, visible from Parkland Drive, is located on the west side of the home and is distinct from the entrance to the main dwelling which faces Keating Street. Access to the apartment entrance is via a concrete walk from the public sidewalk along Parkland Drive. The rear exit to the accessory apartment is located on the east side of the house (down a flight of steps off the patio) within the fenced backyard. Photographs of the main entrance and rear exit to the accessory apartment can be seen on page 6 of the report.

⁵ According to Petitioner's statement in support of his application (Exhibit 3), the accessory apartment existed and was being used as a licensed day care facility when he and his girlfriend, Ms. Da Silva, purchased the property in April 2010.

Petitioner provided the following additional photographs of the driveway, main entrance, and walkway to the accessory apartment (Exhibit 9(b)):

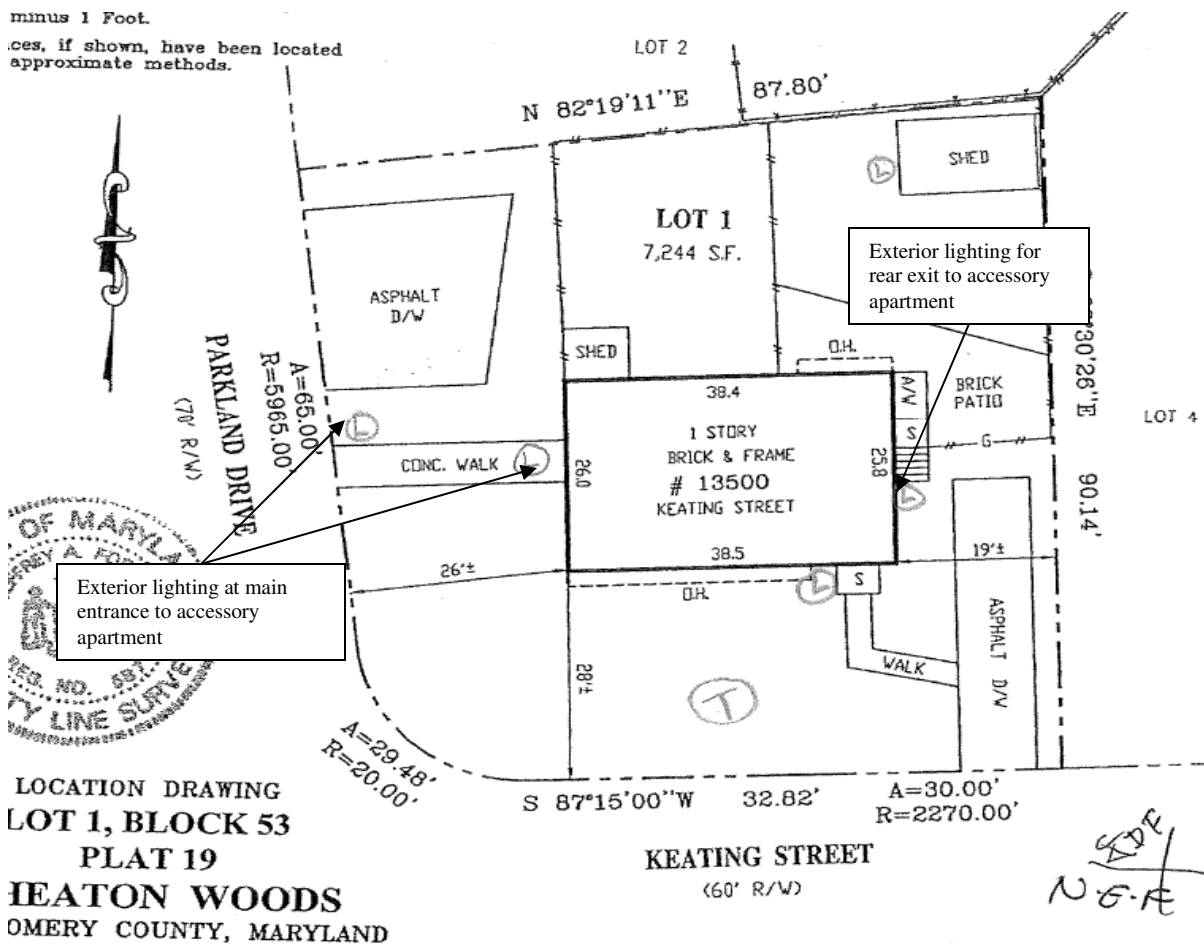


Seperate Rental Driveway & Entrance



Rental Apartment Entrance

Technical Staff reports: "The appearance of the existing single-family is preserved as the entrance to the accessory apartment exists and no modifications are proposed." Exhibit 14(a), p. 11. The Landscape and Lighting Plan (Exhibit 6), as shown below, reflects the location of the existing landscaping and lighting for the property.



SURVEYOR'S CERTIFICATE		REFERENCES		SNIDER & ASSOCIATES	
INFORMATION SHOWN HEREON HAS BEEN THE RESULTS OF A FIELD INSPECTION THE DEED OR PLAT OF RECORD. EXISTING SHOWN HAVE BEEN FIELD LOCATED BASED REMENTS FROM PROPERTY MARKERS FOUND DENCE OF LINES OF APPARENT OCCUPATION.		PLAT BK.	56	LAND SURVEYORS 20270 Goldenrod Lane, Suite 110 Germantown, Maryland 20876 301/948-5100. Fax 301/948-1288	
		PLAT NO.	4558		
LIBER FOLIO		DATE OF LOCATIONS		SCALE:	1" = 20'
		WALL CHECK:		DRAWN BY:	E.M.G.
HSE. LOC.: 04-09-10		JOB NO.:		10-01408	

Landscape & Lighting Plan

T = Tree
L = Light

Technical Staff advises that the lawn is well maintained and found that “the entrance into the accessory apartment and the walkway to the apartment are illuminated with typical residential outdoor light.” Exhibit 14(a), p. 10. Staff further noted, “That no direct light would intrude into any adjacent residential property.” *Id.*

DHCA inspected the property on June 13, 2012. Housing Code Inspector Valerie Whitby reported her findings in a memorandum dated June 28, 2012 (Exhibit 12), as follows:

The preliminary inspection was conducted on 6/13/12. The Accessory Apartment is located in the cellar of the house. The issues regarding the Accessory Apartment standards are as follows:

1. Install light outside the rear exit door.⁶
2. The Accessory Apartment measures 317.5 square feet for habitable space. 2 persons may live in the unit.
3. There are two separate driveways at the property to accommodate off street parking for 4 cars. Street parking is open.

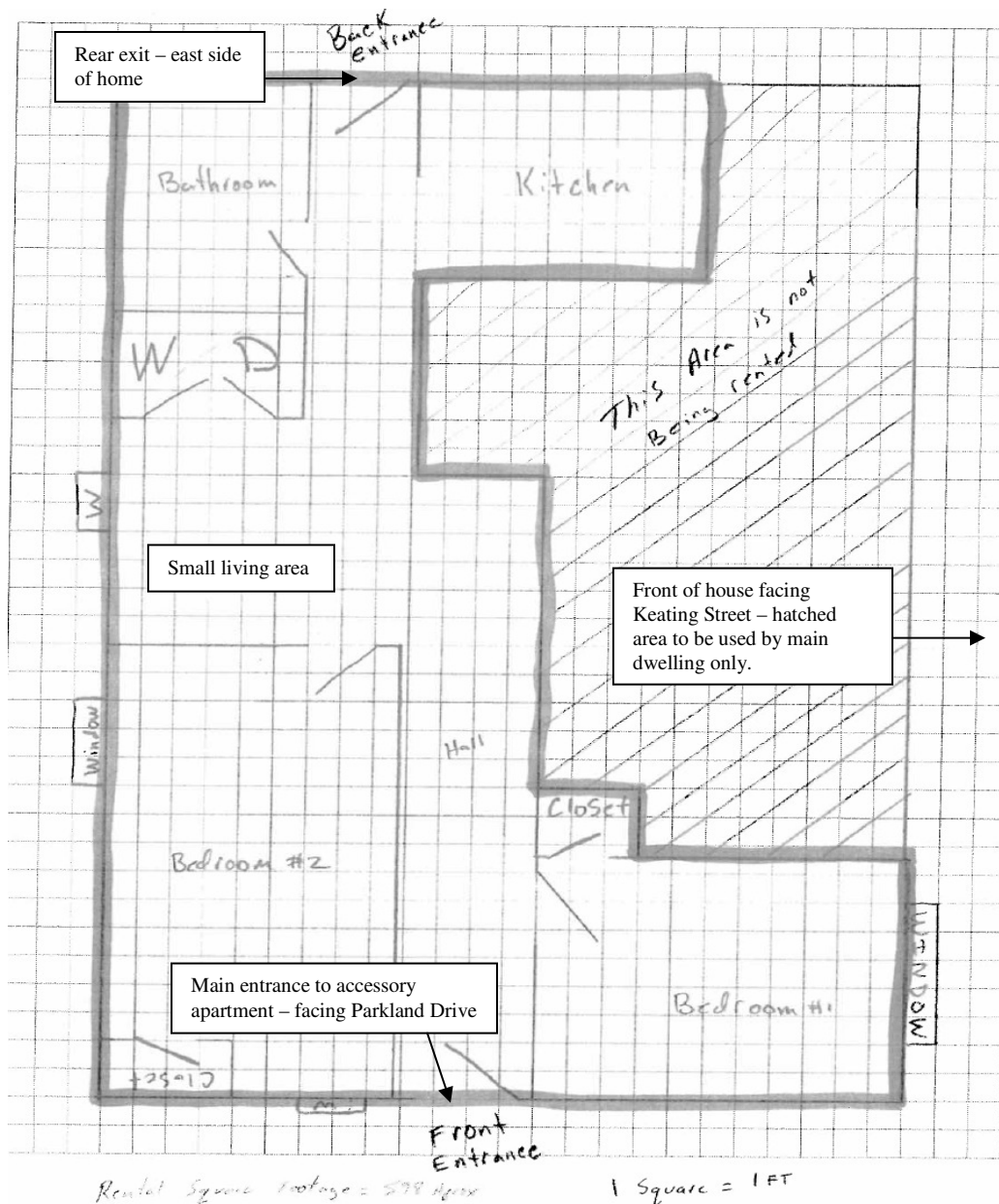
Ms. Whitby clarified that the exterior light outside the rear exit door must be photoelectric. Petitioner testified that he installed the required exterior light prior to the hearing. Tr. 12.

Technical Staff reports: “The property has adequate parking for the apartment with a three-car driveway on Parkland Drive . . . and a separate two-car driveway for the main house [off Keating Street]. There is ample on-street parking on Keating Street.” Exhibit 14(a), p. 2. Consistent with Staff’s finding of adequate parking for the accessory apartment, Ms. Whitby testified that the separate driveway off Parkland Drive will accommodate at least two vehicles. Petitioner testified that the driveway off Parkland Drive will be used by the accessory apartment tenants only since there is adequate parking for the main dwelling on the driveway off of Keating Street. Tr. 21. Based on this information, the Hearing Examiner concurs with Staff’s finding that there is adequate off-street parking for the main dwelling and accessory apartment on Petitioner’s

⁶ Technical Staff included this requirement (condition no. 4) as a condition of approval. Exhibit 14(a), p. 2.

property.

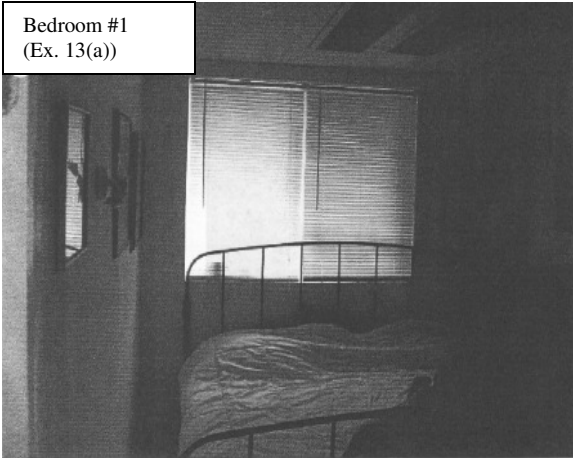
The overall net floor area of the accessory apartment is approximately 598 square feet, 317.5 square feet of which is habitable, and includes a full kitchen, bathroom, laundry facilities, a small living area, and two bedrooms. The Floor Plan is shown below (Exhibit 5):



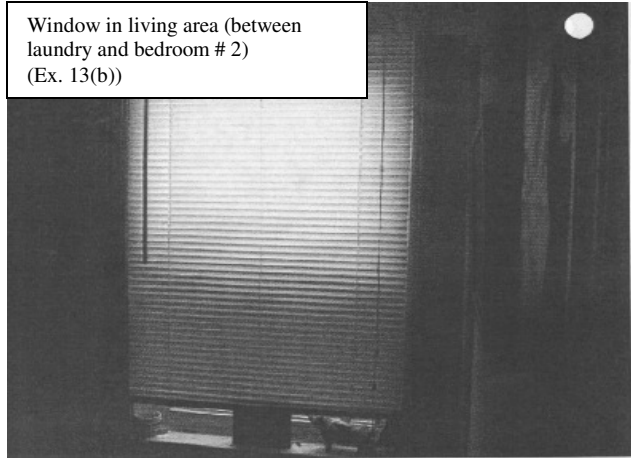
Petitioner testified that the hatched area, noted on the Floor Plan, is not part of the accessory apartment space. This area will be used by the main dwelling occupants. Tr. 18. The

Housing Code Inspector provided several photographs (Exhibit 13(a)-(d)) of the interior of the apartment, shown below:

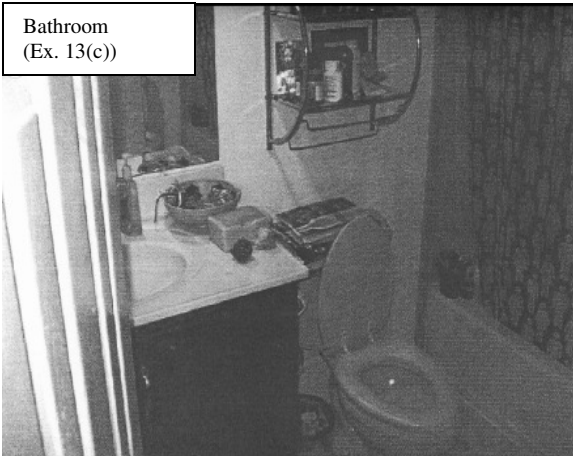
Bedroom #1
(Ex. 13(a))



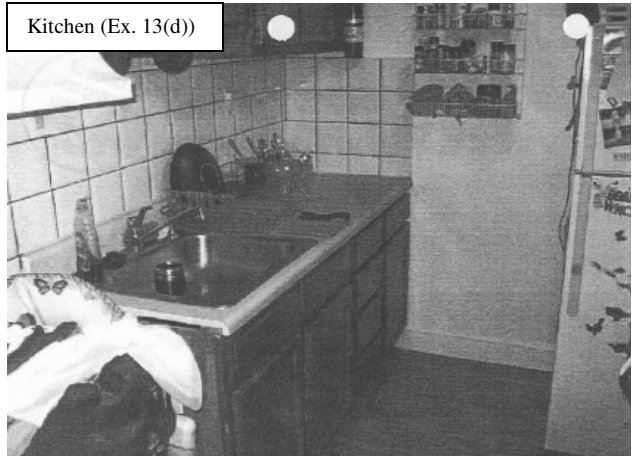
Window in living area (between
laundry and bedroom # 2)
(Ex. 13(b))



Bathroom
(Ex. 13(c))



Kitchen (Ex. 13(d))



E. Traffic Impacts

Technical Staff reports: “The proposed Special Exception meets the transportation-related requirements. It satisfies the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) tests, and will have no adverse impact on area roadways or nearby pedestrian facilities.” Exhibit 14(a), p. 3.

Transportation Staff reported (Exhibit 14(a), Attachment 1):

The proposed accessory apartment will generate one additional (or two total) peak-hour vehicular trips within both the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). A traffic study is not required to satisfy LATR because the proposed land use generates fewer than 30 peak-hour trips within the weekday morning and evening peak periods.

Although a development located in the Aspen Hill policy Area must mitigate 15% of their new site-generated vehicular trips, PAMR mitigation is not required because the accessory apartment generates fewer than three new peak-hour trips.

Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impact on the area roadways and pedestrian facilities. There being no evidence in the record to the contrary, the Hearing Examiner so finds.

F. Environmental Impacts

Petitioners do not propose any external changes to the site. Technical Staff advises that the property “contains no forest, streams, wetlands, or environmental buffers and is located in Rock Creek watershed; a Use I watershed.” Exhibit 14(a), p. 4. According to Technical Staff, the proposed accessory apartment is in compliance with *Environmental Guidelines* and is exempt from the Forest Conservation Law. *Id.* Based on this evidence, the Hearing Examiner finds that Petitioner’s request will have no adverse environmental impacts.

G. Community Response

There has been no response from the community, either positive or negative, to the subject petition.

III. SUMMARY OF THE HEARING

Petitioner, Justin T. Bridgett, testified at the public hearing in support of the petition.

DHCA Housing Code Inspector, Valerie Whitby, also testified as to compliance with the Housing Code. Ms. Whitby's supervisor, Kevin Martell, was present at the hearing but did not testify. There was no opposition at the hearing.

A. Petitioner's Case

Petitioner Justin T. Bridgett:

Petitioner executed an Affidavit of Posting (Exhibit 20) and supplied a copy of the deed to the property (Exhibit 19). Petitioner confirmed that he resides in the home with his girlfriend and co-owner of the property, Adelaide Da Silva, who was not present at the hearing. Petitioner agreed to supply a notarized signed Affidavit from Ms. Da Silva consenting to the Petition and agreeing to be bound by all the conditions if the Petition in this matter is granted. Tr. 4-6. Petitioner testified that the accessory apartment was in existence when he and Ms. Da Silva purchased the property approximately two and a half years ago. Tr. 26.

Petitioner adopted the findings and conclusions in the Technical Staff report (Exhibit 14(a)) as his own evidence and agreed to comply with all the conditions set forth in the report. Tr. 8. Petitioner also agreed with the findings and conclusions of the Housing Inspector's report (Exhibit 12) and agreed to meet all the conditions set forth therein. Petitioner confirmed he installed a photoelectric residential porch light at the rear exit door of the accessory apartment as instructed by the Housing Inspector. Tr. 8-12. The rear entrance to the accessory apartment is on the same side as the main driveway off Keating Avenue. Tr. 15.

Petitioner identified the Site Plan (Exhibit 4), Landscape and Lighting Plan (Exhibit 6), photographs of the property (Exhibit 9 (a)-(b)), and the Floor Plan (Exhibit 5).

Petitioner testified that he took the four photographs shown in Exhibits 9(a)-(b) and they accurately depict the front and side views of his home. The entrance to the main dwelling and rear

entrance to the accessory apartment can be seen in Exhibit 9(a). The front entrance to the accessory apartment is located on the side of the house facing Parkland Drive and adjacent to a three-car paved driveway. The path to the entrance connects to the public sidewalk along Parkland Drive. Petitioner identified interior and exterior photographs (Exhibit 13(a)-(g)) submitted by the Housing Code Inspection. Tr. 15-17

Petitioner identified the Floor Plan (Exhibit 5) for the accessory apartment. He noted the hatched area was not part of the accessory apartment. This area was being used by the owners and is located in the front of the house (facing Keating Avenue). The area between the laundry room and the second bedroom is a small open area with a dining room table. He said it could be used as a living room or dining room. The accessory apartment has a main entrance on the side of the house facing Parkland Drive and a rear entrance on the other side of the house at the end of the driveway off of Keating Avenue. The accessory apartment is currently occupied by two people. Petitioner testified he understood the Housing Code Inspector's finding of 317.5 square feet of habitable space and that occupancy was limited to no more than two people. Tr. 18- 20. Petitioner testified that the paved driveway off of Parkland Drive can accommodate three vehicles and would be used by the accessory apartment tenants only. The owners will park their vehicles on the second paved driveway (two vehicles) off of Keating Avenue. Tr. 21.

B. Public Agency Testimony

Housing Code Inspector Valerie Whitby:

Housing Code Inspector Valerie Whitby testified that she and her supervisor (Kevin Martell) inspected the property on June 13, 2012. She confirmed the accessory apartment included two bedrooms, a small dining area, a kitchen, a full bathroom, and was occupied by two people. Ms. Whitby reported there were no outstanding code violations against the Petitioner. Tr.

26. The main entrance and rear exit doors to the accessory apartment were secured with a single cylinder deadbolt lock. The Inspector confirmed the driveway off of Parkland Drive can accommodate at least two vehicles.

Ms. Whitby also identified a letter dated July 19, 2012 (Exhibit 18), to her from Ada DeJesus, DHCA, Licensing and Registration. Ms. DeJesus reported there were no other accessory apartments in the direct vicinity of Petitioner's home. However, she indicated there were three registered living units (RLU's) in the area and noted that two were active and one had been withdrawn and/or eliminated in 2005. Ms. Whitby also noted that access to the accessory apartment entrance was safe and had sufficient lighting. Tr. 22-25.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception if he complies with the recommended conditions. Exhibit 14(a).

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use as long as Petitioner complies with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties and in the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code Section 59-G-1.2.1. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 14(a), p. 5):

- (1) The existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit;
- (2) The provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the Building Code;
- (3) Provision of a separate entrance and walkway and sufficient lighting;
- (4) Provision of sufficient parking;
- (5) The existence of an additional household on the site; and
- (6) Additional activity from that household, including the potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found that there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff stated (Exhibit 14(a), p. 5):

Staff finds that the size, scale, and scope of the requested use are minimal, and that any noise, traffic neighborhood disruption, or environmental impacts associated with the use would be slight. There are no unusual characteristic of the site.

Based on these findings, Staff concluded “that there are no non-inherent adverse effects arising from the accessory apartment sufficient for a basis for denial.” *Id.*

Based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concurs with Technical Staff and concludes that there are no non-inherent adverse effects from the proposed use.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient

evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions.

§59-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property is covered by the *Aspen Hill Master Plan*, approved and adopted in 1994. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned use, an accessory apartment in a one-family

detached home located in the R-60 zone, is consistent with the goals and objectives of the *Aspen Hill Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed special exception would be in harmony with the general character of the neighborhood especially because no structural changes to the home are proposed or required to accommodate the accessory apartment. It therefore will maintain its residential character. The accessory apartment is fully contained in the basement of an existing dwelling. The main entrance is distinct from the main dwelling and located on the west side of the house, consistent with a side yard entrance of a single-family (split-foyer) home located on a corner lot. The visibility of the existing entrance to the accessory apartment (Parkland Drive) does not detract from the residential character of the neighborhood especially considering the home is located on a corner lot and its prior special exception use as a dental office for more than 35 years (CBA-2972). Occupancy will be limited to no more than two people and therefore will have only minimal impact on population density. There is sufficient off-street parking for at least four vehicles on the three-car driveway off Parkland Drive and two-car driveway off Keating Drive to accommodate the main dwelling and accessory apartment. According to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There is only one approved special exception (home occupation for restoration and

storage of antiques and collectibles) and no other accessory apartment uses within the Staff-defined neighborhood. The Hearing Examiner finds that the addition of the proposed accessory apartment to the neighborhood will not be excessive or change the residential character of the neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the answer to the previous section of this report, the Hearing Examiner agrees and finds that the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found “the proposed use will not cause any objectionable adverse effects.” Exhibit 14(a), p. 6. The use will be indoors and residential. According to Staff, the walkway and entrance to the accessory apartment “are illuminated with typical residential outdoor lighting.” Exhibit 14(a), p. 10. Staff found “that no direct light would intrude into any adjacent residential property.” *Id.* The Hearing Examiner finds the proposed accessory apartment will cause no objectionable

noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: As previously discussed, there is only one approved special exception (home occupation) and no other accessory apartments located within the neighborhood. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff reports: “The available public facilities are adequate to serve the proposed [special exception] use.” Exhibit 14(a), p. 7. The evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
 - (i) does not require approval of a new preliminary plan of subdivision; and*
 - (i) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception’s impact;**then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case will not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Since the existing house, combined with the proposed

accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the availability of adequate off-street parking and the limited number of additional trips generated by the special exception, the Hearing Examiner concurs with Technical Staff and finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 14(a)), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in*

common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The accessory apartment is located in the basement of an existing one-family detached dwelling and therefore shares a wall in common, as required for a lot of this size (under one acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in the basement of an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The house was built in 1959. Exhibit 17. It therefore meets the “5 year old” requirement.

- (5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection.

Also, a requirement that the occupancy of the main dwelling and the accessory apartment meet all these standards will be a condition of this approval.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: There are two entrances to the accessory apartment. The main entrance is located on the west side of the house and the rear exit is located on the east side of the house. The rear exit is not visible because of the rear yard fencing. While the main entrance to the accessory apartment is visible, it is consistent with a side entrance to a single-family home located on a corner lot. The Hearing Examiner concurs with Technical Staff's finding "[t]he appearance of the existing single-family is preserved as the entrance to the accessory apartment currently exists and no modifications are proposed." Exhibit 14(a), p. 11. Thus, there will be no change to the residential appearance of the dwelling. The Hearing Examiner so finds.

- (7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioner is not proposing any new construction or modifications to the exterior of the dwelling.

- (8) *The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to*

a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.

Conclusion: The accessory apartment, at 598 square feet, 317.5 square feet of which is habitable, is under the maximum 1,200 square feet restriction. Technical Staff estimated the home's total enclosed floor area is approximately 2,054 square feet. The Hearing Examiner finds, as did Technical Staff, that the accessory apartment is subordinate to the main dwelling.

59-G § 2.00(b) Ownership Requirements

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the main dwelling on the property.

- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed (Exhibit 19) submitted into the record, Petitioner and Adelaide Da Silva purchased the property on April 19, 2010. The one-year rule has therefore been satisfied.

- (3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: Petitioner submitted a deed (Exhibit 19) dated April 19, 2010, evidencing joint ownership of the subject property with Adelaide Da Silva. Therefore, the Hearing Examiner concludes that this condition has been met.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject property consists of a single (corner) lot that is approximately 7,244 square feet in area, and therefore satisfies this requirement. The property is located in the R-60 Zone, which permits an accessory apartment as a special exception use. Technical Staff provided a table, shown in the next section (D. Additional Applicable Standards), which demonstrates compliance with the development standards of the R-60 Zone.

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special*

exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: As discussed in Part III. B of this report, there is only one approved special exception (home occupation) and no other accessory apartments located within the Staff-defined neighborhood. The Hearing Examiner concurs with Technical Staff's conclusion and finds that the proposed special exception will not create an excessive concentration of similar uses.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: There are at least four off-street parking spaces available on the two existing paved driveways located on subject property. Petitioner confirmed the driveway off Parkland Drive, which can accommodate at least two vehicles, will be used by the accessory apartment tenants only. The Petitioner will use the two-car driveway on the east side of the property accessed from Keating Street. Tr. 21. The Hearing Examiner finds, therefore, that the minimum requirement of two (2) off-street parking spaces has been met and there is sufficient off-street parking to accommodate the main dwelling and accessory apartment.

D. Additional Applicable Standards

59-G § 1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special

exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: The subject property is in the R-60 Zone. The following table from the Technical Staff report (Exhibit 14(a), p. 8) demonstrates compliance with all development standards for the R-60 Zone:

Table 1: Applicable Development Standards – R-60 Zone

Development Standards	Required	Provided
Maximum Building Height: (59-C-1.327)	35 feet	±16 ft.
Minimum Lot Area: (59-C-1.322)	6,000 sq. ft.	7,244 sq. ft.
Minimum Width at Front Building Line: (59-C-1.322)	60 ft.	80'
Minimum Width at Proposed Street Line: (59-C-1.323)	15 ft.	±42'
Minimum Front Yard Setback: (59-C-1.322)	25 ft.	±28 ft.
Minimum Side Yard Setback: (59-C-1.323)	8 ft. one side, 18 ft. sum of both sides	±19' one side, ±45 sum of both sides
Minimum Rear Yard Setback: (59-C-1.323)	20 ft.	± 33 ft.
Maximum Building Coverage: (59-C-1.328)	35%	13.6%
Maximum Floor Area for Accessory Apartment (59-G-2.00)	1,200 sq. ft. or less than 50% of GFA	±598 sq. ft.

(b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As discussed in Part II.D of this report, there is adequate off-street parking on the property to accommodate the accessory apartment and main dwelling. The driveway located on Parkland Drive can accommodate at least two vehicles and will be used by the accessory apartment tenants. The driveway located on Keating Street, on the east side of the property, can accommodate two vehicles and will be used by the main dwelling occupants. There is ample on-street parking available on Keating Street. The Hearing Examiner concurs with Technical Staff and finds that “[a]dequate parking exists for the proposed accessory apartment.” Exhibit 14(a), p.8. Further, the Hearing Examiner concurs with Staff that “proposed special exception request meets the parking requirements of Article 59-E.” *Id.* The Hearing Examiner so finds.

(c) ***Minimum frontage.*** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) *Rifle, pistol and skeet-shooting range, outdoor;*
- (2) *Sand, gravel or clay pits, rock or stone quarries;*
- (3) *Sawmill;*
- (4) *Cemetery, animal;*
- (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities;*
- (6) *Equestrian facility;*
- (7) *Heliport and helistop.*

Conclusion: The special exception is not included in the above list and is therefore, not applicable. The proposed use will not result in any change in the site’s frontage, which satisfies the minimum frontage requirements of the R-60 Zone.

(d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: As discussed in Part II. F of this report, the property is exempt from the Forest Conservation Law because the property is less than 40,000 square feet. Based on this evidence, and having no evidence in the record to the contrary, the Hearing Examiner finds that Petitioner's request will have no adverse environmental impacts.

(e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: This section pertains only to sites in special protection areas, where water quality plans are required. This site is not within an SPA.

(f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner has not proposed any signs.

(g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: There will be no external modifications or changes to the existing dwelling to accommodate the accessory apartment. Thus, the existing dwelling will maintain its residential appearance of a single-family detached home compatible with the R-60 Zone.

(h) ***Lighting in residential zones.*** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.
- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: Technical Staff reports: “[T]he entrance into the accessory apartment and the walkway to the apartment are illuminated with typical residential outdoor lighting. Staff finds that no direct light would intrude into any adjacent residential property.” Exhibit 14(a), p. 10. With the exception of the installation of a photoelectric cell light at the rear exit to the accessory apartment, no new lighting will be added. The Hearing Examiner agrees with Technical Staff that the outdoor lighting is residential in character and finds that there will be no direct light intrusion or objectionable illumination or glare at the site as a result of the special exception.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Justin T. Bridgett, BOA No. S-2837, which seeks a special exception for an accessory apartment to be located at 13500 Keating Street, Rockville, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record;

2. The Petitioner must comply with the conditions set forth in the Memorandum of Valerie Whitby, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 12):
 - a. Install a light outside of the rear exit door.
 - b. The Accessory Apartment measures 317.5 square feet for habitable space. 2 people may live in the unit.
 - c. There are two separate driveways at the property to accommodate off street parking for 4 cars. Street parking is open
3. The Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
4. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
5. The Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
6. The Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: August 29, 2012

Respectfully submitted,



Tammy J. CitaraManis
Hearing Examiner